

OLC 73-1171

10 October 1973

MEMORANDUM FOR: General Counsel
DDM&S

SUBJECT : CIARDS--Conforming Amendments

I. Background

Attached is a listing and analysis of several bills under active consideration in the 93rd Congress which amend provisions of the Civil Service Retirement Act. In the main, these bills liberalize the benefit structure of the Civil Service Retirement system and failure to keep pace would detract from the CIARDS system.

II. Tactics

A. Current Submission to OMB - Presently, Agency proposed amendments are pending in OMB. These amendments cover the extremely important areas of financing and catching up to previous liberalizing benefits approved for the Civil Service system in the 91st and 92nd Congresses. Incorporation in the legislative package now in OMB's hands of legislation not yet enacted but active in the 93rd Congress would tend to complicate the OMB clearance.

B. Direct Approach to Congressional Post Office and Civil Service Committees - OLC is taking soundings on the Hill with our Armed Services oversight committees and the Congressional Civil Service and Post Office Committees to determine the feasibility of enlarging the applicability of these active bills to include CIARDS. (Traditionally, our oversight committees have been opposed to relinquishing exclusive jurisdiction.)

C. Statutory Authority to Incorporate - In light of the desirability or necessity of CIARDS keeping pace with frequent amendments to the Civil Service Retirement Act, there is considerable merit to an amendment granting the Director the authority to administratively incorporate future changes in the Civil Service law. (Again, traditionally our committees have been against such a delegation of authority.)

D. Other Considerations - Concern has been expressed that seeking amendments to any CIA statute provides an opportunity for circumscribing statutory authority which is necessary to the fulfillment of the Agency's mission. As a consequence, the timing of active consideration of CIA legislation and the atmosphere on the Hill at the time is an extremely important consideration.

III. Courses of Action

Pending further developments, OLC will pursue staffing out this problem with the appropriate committees on the Hill and with the Department of State, which shares our interest, insofar as these amendments may also have applicability to the Foreign Service Retirement system. As soon as the above is accomplished, OLC will consult with the General Counsel and DDM&S (Personnel and Finance) to work out a recommendation for the Director on this matter.



JOHN M. MAURY
Legislative Counsel

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Attachment

93rd CONGRESS

ACTIVE CIVIL SERVICE RETIREMENT ACT AMENDMENTS

H. R. 3799 S. 2144	Eligibility Cost of Living Increase
H. R. 9107 S. 1866	Minimum Annuity Guarantee and Flat Increase for Pre-October 20, 1969 Retirees
H. R. 9281	Liberalize Annuity Formula, etc. for Law Enforcement and Firefighting Personnel
H. R. 9257	Changing Rates for Employee Retirement Contributions
S. 628	Restores Reduced Annuity to Full Amount While Annuitant No Longer Married
S. 2174	Defines "widow" and "widower"

H. R. 3799

Cost of living increase

Provisions:

a. guarantees a minimum annuity equal to what would have been payable had retiree been eligible for the most recent cost of living adjustment of annuity. Presently, he must retire before a cost of living adjustment to receive its benefits.

b. retroactive to apply the last cost of living adjustment effective 1 July 1973 to those who retired on or after 2 July.

Administration Position:

The Administration has submitted the same bill previously to avoid the heavy burden when large numbers of employees all retire at the same time to take advantage of a cost of living increase.

Applicability to CIA Retirement Act:

The cost of living provision in the CIA Act is the same as the CSC system and should conform. See Tab A.

Status:

Passed the House on 17 September 1973.

Passed the Senate 11 October 1973.

S. 2144

Cost of living increase

Provisions:

Same as H. R. 3799, except it is not retroactive.

Administration Position:

This is the same as past administration bills.

Applicability to CIA Retirement Act: -

As in H. R. 3799, the CIA Act should conform.

Status:

Ordered favorably reported on 25 July 1973, but it has been held up in Committee pending clarification on whether it should be retroactive. Arthur Eck, Committee Staff on Senate Post Office and Civil Service, advised on 24 September that there was considerable confusion in Committee on this point and the Senate Committee would probably accept the House version, H. R. 3799. They did and H. R. 3799 was reported favorably and passed Senate, 11 October 1973.

H. R. 9107

Increases certain annuities

Provisions:

Ninety days after enactment, increases certain annuities by:

a. Amending Section 8345 of Title 5 guaranteeing that no civil service annuity shall be less than the prevailing primary insurance under social security benefits (now \$85 monthly). Comparable benefits would also be paid to a surviving spouse and children. In determining eligibility for the minimum guaranteed, any benefits from other retirement programs, (e.g., veterans' pensions) are to be included.

b. Providing a flat \$300 per annum increase for annuitants who were separated prior to 20 October 1969 or \$165 per annum to their surviving spouses.

Administration Position:

The Administration strongly opposes the bill on the basis that Civil Service retirement carefully relates annuities to length of service and salary levels. A concept of minimum annuities, it feels, would weaken this relationship. The Administration is opposed to a policy that would assure past retired employees that their benefits will be kept on a par with those available to employees currently retiring. The Administration pointed out significant cost of living increases of the last several years.

Applicability to CIA Retirement Act:

H. R. 9107 is intended to benefit primarily those individuals who have been retired for a period of years under CSC. The minimum retirement under the CIA Retirement Act is \$97 which exceeds the present \$85 minimum. Though the Administration opposes the bill, if it passes and is signed into law, we should consider adoption since future increases in Social Security may result in the CSC minimum exceeding the CIARDS minimum. See Tab B.

The \$300 per annum increase in the annuities of retirees under CSC who retired prior to 20 October 1969 should be equally applied to retirees under the Agency system.

Status:

Reported favorably by House Post Office and Civil Service Committee on 11 September 1973.

S. 1866

Increases certain annuities

Provisions:

Amends Sections 8339 and 8341 of Title 5 to guarantee the same minimum Civil Service retirement comparable to Social Security as in H.R. 9107 and in addition:

a. provides an increase of \$240 per annum for annuitants separated prior to 20 October 1969, or \$132 to their surviving spouses.

b. provides that the Social Security increase of 5.9% recently made law be effective in the month of enactment of the bill and not June 1974.

Administration Position:

Same as for H.R. 9107

Applicability to CIA Retirement Act:

S. 1866 is applicable for same rationale as for H.R. 9107.

Status:

Passed the Senate on 11 September 1973.

H. R. 9281

Annuity increase for law enforcement and
firefighting personnel under Section 8336 (c)
of Civil Service Commission Act

Provisions:

a. increases computation formula to 2 1/2% for each of the first 20 years of such service and 2% thereafter. (Presently: computed at 2% not to exceed 40 years.)

b. provides mandatory retirement at age 55 (or older age until 20 years service rendered) unless employee's agency exempts - no extension over 60 (Presently: mandatory retirement at 70).

c. increases employee deduction to 7 1/2% (Presently: 7%).

d. includes premium pay for law enforcement officers in computing base pay. Presently, only the premium pay for persons who have to remain at their station, such as firefighters, can be added to base pay for retirement.

Administration Position:

The Administration is opposed to H. R. 9281. CSC considered the computation formula increase excessively generous and stated that it would be a more appropriate incentive for early retirement to have the regular formula (1 1/2%, 1 3/4%, 2%) with a guaranteed basic annuity of not less than 50%. CSC is also opposed to increasing the employee deduction to 7 1/2% as it considers an early retirement program a management objective and employees should not be asked to help pay for a management tool. The CSC concurred in the proposal to subject law enforcement officers to a mandatory retirement at age 55.

H. R. 9281 Annuity increase for law enforcement and fire-fighting personnel under Section 8336(c) of Civil Service Commission Act

Administration Position:

Though the Administration concurs in the proposal to subject law enforcement officers to a mandatory retirement at age 55, it is opposed to H. R. 9281 for the following reasons:

- a. The computation formula is excessively generous. (CSC recommends a guaranteed basic annuity of 50% as a more appropriate incentive for early retirement.)
- b. It opposes the concept of increasing employee deductions as it considers early retirement programs management tools and increased costs should not be born by employees.
- c. It would apply the concept of minimum and maximum age limits to be applied uniformly throughout government, rather than meeting the specific needs of each agency. The premium pay provision is considered enactable as not all law enforcement officers are paid under this provision. Further, the section of the CSC retirement law providing premium pay for law enforcement officers is not limited to such officers only.

Applicability to CIA Retirement Act:

The present computation formula of 2% in the CIA Retirement system is not in phase with the formula for law enforcement officers and the foreign service, except the maximum under CIA and the foreign service is 35 years or 70%, rather than 80% under CSC. To adopt a liberalized computation formula in H. R. 9281, one must carefully consider the reasons for the proposal. It is contended that law enforcement must be a "young man's service" in order to improve the quality, efficiency, and productivity of police work. The hasardness aspects of the positions are related specifically to the position rather than the of the individual employee. The committee notes that though the law enforcement retirement program was to be an incentive for early retirement to assure a young service, many stay until the mandatory retirement age of 70. The committee considers the maximum mandatory retirement age of 55 as the most effective way to assure a young man's service and ~~the added~~ benefits would make it more economical and practical for these employees to retire or or before the attainment of age 55.

The proposed CIARDS is not to achieve a "young man's service". The mandatory retirement age is 60, though the Director in his discretion may retire a participant at age 50 with 20 years of service and any participant with 25 years. Participants in CIARDS designated upon a ~~a~~ termination that they support agency activities abroad hasardness to life or health or their duties are so specialized because of security requirements as to be clearly distinguishable from normal government employment. Accordingly, the rationale for increasing retirement benefits for law enforcement officers to achieve a younger service does not apply to CIARDS. If consideration is given to adopting the liberalized formula in the CIARDS system, the mandatory retirement age should be dropped from age 60 to age 55. However, the rationale behind the CIARDS program does not support the lowering of the mandatory retirement age.

There is a strong possibility of a veto of H. R. 9281 if it passes the Congress. If it is, however, signed into law, its provisions are not related to CIARDS except perhaps the provision to include premium pay in computing base pay. A review by personnel would be necessary to determine which if any positions should be so covered.

Applicability to CIA Retirement Act

a. The present computation formula of 2% in the CIA retirement system is based upon the formula for law enforcement officers, except that the maximum under CIA is 35 years or 70%, rather than 80% under CSC. To assure that the Agency system remains comparable and as a necessary incentive for early retirement, the formula for computing retirement in H. R. 9281 should be adopted. This would allow a retirement of 50% of base pay for 20 years service and 2% per year for all years of service over 20. Under the mandatory retirement provisions in Section 235 of the CIA Act, 25 years service would allow a retirement of 60%, a 10% increase and a similar 10% increase for 20 years service and age 55. See Tab C - I.

b. The CIA Retirement System has mandatory retirement provisions; therefore, these provisions in H. R. 9281 would not apply.

c. The increase in employee deductions to 7 1/2% under H. R. 9281 is for the purpose of partially defraying costs. If approved by the Congress and signed into law by the President, it would set the precedent for a higher contribution for early retirement programs. If the higher computation formula is sought by CIA, we may have to tie it to the higher employee contribution.

d. The inclusion of premium pay in computing base pay should apply to the Agency system. See Tab C - II.

Status:

Passed the House, 20 September 1973.

H. R. 9257

Revises employee CSC retirement deductions

Provisions:

Authorizes CSC to adjust employment retirement deductions based on employee and government each paying one half of normal cost. This would result in lowering employee deductions to 6 1/2% since current normal cost is 13%. (Presently: Employee deduction is fixed at 7% based on normal cost of 14%.)

Administration Position:

Supports enactment of H. R. 9257 provided it is amended as follows:

The adjustment of contribution and deduction rates by the CSC be broadened to permit the Commission to recommend alternatives to rate adjustments should such adjustments be detrimental to the fund. The Administration is opposed to an immediate reduction in employees' contributions under rigid application of a fixed formula. It feels the contribution should be based on a long term career basis rather than the experience of a given year or other period. The Administration in general supported the bill since even if immediate reduction in contribution results, the rate could be later adjusted upward.

Applicability to CIA Retirement:

The current 7% deduction for the CIA system is based upon the deduction for the CSC system; however, it does not equate to one half of the normal cost. The normal cost of the CSC system is about 13% of the overall amount received; whereas, the Agency system is in excess of 30%. This is due to the much broader base upon which the CSC draws and the lower average grade of CSC retirees.

The formula of the CSC, if strictly applied to the Agency system, would result in an employee deduction of about 15% which is unacceptable. However, it is an agreed concept in CIA, that employee deductions for the CSC and CIA retirement systems be the same. This is especially necessary since CIA employees switch between retirement systems as their status changes.

Further, the CIA Act achieves a management objective for a young service. Note that the Administration took the position concerning H.R. 9281 that employees should not help pay for a management tool. Accordingly, if the CIA Retirement Act is amended, it should merely provide that an employee contribution be the same as the contribution for the Civil Service Retirement system. See Tab D.

Most significant in considering this problem will be the action by Congress on H.R. 9281 which proposes an increase in the computation formula for law enforcement officers and an increase in employee deductions to 7 1/2% to cover the increased costs. If H.R. 9281 is approved by the Congress and President, the concept of a higher employee contribution for early retirement CSC programs may be forced on the CIA early retirement program.

Status:

Passed the House on 1 October 1973.

S. 628

Eliminates the annuity reduction for a surviving spouse during periods when annuitant is not married

Provisions:

Amends Chapter 83 of Title 5 to eliminate the reduction in annuity when providing for a surviving spouse during any periods when the annuitant is not married. The bill would cover payments made after its enactment.

Administration Position:

The Administration opposes enactment of S. 628. The CSC estimates if the bill is enacted the unfunded liability would be increased by 135 million and the normal cost would be increased by .01 of pay role. The CSC noted that originally the reduction was equal to the full actual cost of the surviving protection of the life time of the retiree; however, over the years the reduction has been decreased to the point it is now only a fraction of the cost of survivor protection.

Applicability of CIA Retirement Act:

This provision should be adopted by the CIA retirement system only if it is approved by the Congress and signed into law by the President. The provision is of particular concern to the CIA retirement program since with earlier retirement there are instances of changing marital status. See Tab E.

Status:

Passed the Senate on 9 May 1973.

S. 2174 Defines widow and widower

Provisions:

The purpose of the bill is to amend the definition of "widow" and "widower" of a deceased annuitant who is eligible for survivor benefits under the CSC retirement system. Under current law, a surviving spouse is one who (a) was married to the deceased for the last 2 years prior to his death or (b) was the parent of issue by that marriage. S. 2174 changes the 2 year marriage requirement to one year. The bill is prospective and would not apply to survivors of annuitants who died before the date of enactment.

The Committee report notes that the legislative history of the 2 year marriage requirement was selected out of compromise and was clearly arbitrary. The report further noted that other major retirement systems, such as veterans' pensions and social security, have reduced the marriage requirement to one year or less. The Committee felt that one year was an adequate time to protect against "death bed" marriages.

Administration Position:

The Committee report does not reflect an Administration position. (The provision, however, is considered by the Committee to be more administrative than of a substantive benefit.)

Applicability of CIA Retirement Act

Since this provision is based on the CSC system, the change should be enclosed in the CIA Act to assure conformity. See Tab F.

Status:

Passed the Senate on 20 September 1973.

H. R. 3799

Tab A

(Add the following immediately after Section 291 (b) as new (1) and renumber present (1), (2) and (3) as (2), (3) and (4) respectively):

"(1) An annuity (except a deferred annuity under section 234 (a) of this Act) which:

(i) is payable from the Fund to a participant who retires, or to the widow or widower of a deceased participant; and

(ii) has a commencing date after the effective date of the then last preceding annuity increase under subsection (a) of this section;

shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of the then last preceding annuity increase under subsection (a) of this section. In the administration of this paragraph, a participant or deceased participant shall be deemed, for the purpose of section 221 () of this Act, to have to his credit, on the effective date of the then last preceding annuity increase under subsection (a) of this Act, a number of days of unused sick leave equal to the number of days of unused sick leave to his credit on the date of his separation from the service."

H. R. 9107

Tab B

(Add to Section 221 as subsection (1))

(1) (1) Notwithstanding any other provision of this section, other than this subsection, the monthly rate of annuity payable under subsection (a) of this section, shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act.

(2) Notwithstanding any other provision of this section, other than this subsection, the monthly rate of annuity payable under subsection (a) of this section to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act, or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) The provision of this subsection shall not apply to a participant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act, a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof, is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act.

H. R. 9281

Tab C

- I. (Amend Section 221(a) as follows with added language underlined)

"SEC. 221. (a) The annuity of a participant shall be equal to 2 1/2 per centum of his average basic salary for the highest three consecutive years of service... multiplied by the number of years, not exceeding twenty [thirty-five], of service credit obtained in accordance with the provisions of section 251 and 252. All years of service over twenty are computed on the basis of 2 per centum of the participant's average basic salary. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. "

- II. (Amend Section 221 by adding a new subsection (b) and relettering subsequent subsections (b) through (k) as (c) through (l) respectively)

(b) The average basic salary shall include premium pay provided a participant on an annual basis in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty and duty at night, on Sundays, and on holidays with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty.

OR

(b) The average basic salary shall include premium pay provided a participant on an annual basis, excluding premium pay for unusual physical hardship or hazardous duties.

H. R. 9257

Tab D

(Revise Section 211 (a) as follows):

"SEC. 211 (a) [Seven per centum of the basic salary received by each participant shall be contributed to the fund.] Each participant shall contribute to the fund a per centum of the basic salary received, equal to the per cent deducted from the basic pay of an employee, in accordance with Section 8334 (a) (1), Title 5, for the payment of annuities, case benefits, refunds and allowances...."

(S. 628)

Tab E

Part C - Computations of Annuities

Amend Section 221(b) as follows with the added language underlined:

"(b) At the time of retirement, any married participant may elect to receive a reduced annuity and to provide for an annuity payable to his wife or her husband.... The annuity of the participant making such election shall be reduced for any month during which that employee or member is married for any portion of the month by 2 1/2 percentum of any amount up to \$3600 be specified as the base for the survivor benefit plus 10 percentum of any amount over \$3600 so specified." This provision applies with respect to monthly payments of annuities paid for any month commencing on or after (date of enactment).

(S. 2174)

Tab F

Revise Section 204(b)(1) and Section 204(b)(2) as follows:

"(1) 'Widow' means the surviving wife of a participant who was married to such participant for at least [two years] one year immediately preceding his death or is the mother of issue by marriage to the participant."

"(2) 'Dependent widower' means the surviving husband of a participant who was married to such participant for at least [two years] one year immediately preceding her death..."

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Legislative Counsel

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NO.

73-1171

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10 October 1973

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TO: (Officer designation, room number, and building)

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COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

General Counsel

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DDM&S (2 copies)

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Attached is a listing and an analysis of active bills which amend the CSC retirement act together with recommended courses of action as to their applicability to CIARDS.

We would appreciate your comments at your earliest convenience since in most cases, chances of passage appears good.

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JOHN M. MAURY
Legislative Counsel

Attachment